Rec'd. 1/30/84

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

IN REPLY REFER TO THE FOLLOWING AND THE FILING DATE:

SERIAL NO.	APPLICANT
395324	POINT FOUNDATION
MARK	
WHOLE EARTH SOFTWARE CATALOG WHOLE EARTHETC	
ADDRESS	ACTION NO.
POINT FOUNDATION P. O. BOX 428 SAUSALITO, CA 94966	01
	MAILING DATE
	01/25/84

FORM PTO-1293 (Rev. 12-82) U.S. DEPT. OF COMM. PAT. & TM OFFICE

PAPER NO.

ADDRESS
Commissioner of Patents and Trademarks
Washington, D.C. 20231

The address of all correspondence not containing fee payments should include the words "Box 5."

Please furnish the following in all correspondence:
1. Your telephone number and zip code.
2. Mailing date of this action.
3. Examining Attorney's name and Law Office number.

After review of the above identified application for trademark and/or service mark registration, applicant is advised as follows:

The specimens are not acceptable because they are in the nature of advertising materials and, as such, are not regarded as evidence of actual trademark use. Applicant should submit five specimens (e.g., tags, labels, or containers or photographs thereof) of a type actually used. Use of the substitute specimens as of a date at least as early as the filing date of this application must be supported by an affidavit or by a declaration in accordance with 37 CFR §2.20. TMEP Section 808.10.

One of the required five substitute specimens should be a complete copy or issue of applicant's publication. Rule 2.61(b). The other four substitute specimens may be photocopies or photographs of the cover and/or title page of the complete copy or issue submitted showing the mark.

Relatedly, the examiner is unable to determine, on the basis of the record to date, whether the subject matter the applicant includes in its drawing forms a unitary mark. As used on the present specimens, SOFTWARE CATALOG and SOFTWARE REVIEW, appear to be informational statements set apart from the mark, WHOLE EARTH. If the new specimens do not display the subject matter as a unitary mark, the applicant should cancel the terminology, SOFTWARE CATALOG and SOFTWARE REVIEW, from the drawing. If the applicant retains this subject matter the applicant must amend the record to insert a disclaimer of this descriptive wording.

A properly worded disclaimer would read as follows:

> No claim is made to exclusive use of the wording "Software Catalog" and "Software Review" apart from the mark as shown.

See Section 6 of the Trademark Act; TMEP Section 904.06.

A proper response to THIS OFFICE action must be received within 6 months from the date of this action in order to avoid ABANDONMENT.

2—Applicant's Copy

PTOL 89 (REV. 11-82)

The applicant should explain its basis for asserting use in "territorial commerce" for the record.

The name(s) "Doubleday" (which seems to identify a party (or parties) different from applicant) appears on the specimens and/or commercial literature. The relationship between said party (parties) and applicant must be explained; and it must also be explained how this use of the mark inures to applicant's benefit. Section 5 of the Trademark Act; 37 CFR §2.38; TMEP Section 1201.01(a).

Please contact the Examining Attorney by telephone if you have any questions or need assistance in responding to this communication.

A search of the Office records fails to show that the mark, when applied to applicant's goods and/or services, so resembles any registered mark as to be likely to cause confusion, or to cause mistake, or to deceive. TMEP Section 1105.01.

JW:llb;h

James Walsh
Trademark Attorney/Law Office I
(703) 557-3273